

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

December 21, 2017

Via ECF and by Fax

The Honorable Naomi Reice Buchwald
United States District Court for the
Southern District of New York
500 Pearl Street, Room 2270
New York, NY 10007-1312

**Re: *Knight First Amendment Institute, et al. v. Trump,
et al., Case No. 17-CV-5205 (NRB)***

Dear Judge Buchwald,

Plaintiffs submit this letter to alert the Court to the government's concession, made during a recent oral argument before the United States Court of Appeals for the Fourth Circuit, that President Trump's tweets are official statements.

The government's concession was made during en banc oral argument held on December 8, 2017 in *International Refugee Assistance Project v. Donald Trump*, No. 17-2231 (4th Cir.) ("*IRAP*"), a case concerning the lawfulness of the President's revised travel ban. The Fourth Circuit does not make oral argument transcripts available, but an audio recording of the argument is available at <http://coop.ca4.uscourts.gov/OAarchive/mp3/17-2231-20171208.mp3>. The colloquy in which Department of Justice Deputy Assistant Attorney General Hashim M. Mooppan addressed the legal significance to be given to President Trump's tweets took place between 36:07 and 37:08 of the audio file, including in the following exchange at 36:54-37:01:

JUDGE PAMELA HARRIS: "And it is the Department's position, right, that these—the President's Twitter account—those are official statements of the President of the United States?"

MR. MOOPPAN: "Right."

Following this exchange, several judges asked Mr. Mooppan to confirm that he was acknowledging that the President's tweets are official statements, and Mr. Mooppan so confirmed.

The government's concession to the court in the *IRAP* argument provides further support for Plaintiffs' argument, set forth in memoranda

supporting Plaintiffs' pending motion for summary judgment, that Defendants' operation of the President's Twitter account is state action subject to the First Amendment.

Respectfully,

/s/ Jameel Jaffer

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